

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 18AP-870
	:	(C.P.C. No. 03CR-7726)
v.	:	
	:	(REGULAR CALENDAR)
Philip A. Jordan,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on June 25, 2019

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**On brief:** *Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

**On brief:** *Philip A. Jordan*, pro se.

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APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Philip A. Jordan, appeals from a journal entry of the Franklin County Court of Common Pleas denying his motion to vacate or delay payment of court costs. For the following reasons, we affirm.

**I. Facts and Procedural History**

{¶ 2} By indictment filed November 18, 2003, plaintiff-appellee, State of Ohio, charged Jordan with ten counts of rape in violation of R.C. 2907.02, all first-degree felonies. A jury found Jordan guilty of four counts of rape, and the trial court sentenced Jordan to life in prison concurrent with three consecutive eight-year terms. The trial court ordered payment of court costs as part of the judgment, journalizing Jordan's convictions and sentence in a January 20, 2006 judgment entry.

{¶ 3} Jordan challenged his convictions on direct appeal, and this court affirmed his convictions. *State v. Jordan*, 10th Dist. No. 06AP-96, 2006-Ohio-6224. Jordan did not challenge the imposition of costs in his direct appeal. Subsequently, Jordan filed an application for reopening pursuant to App.R. 26(B), and this court denied that application.

{¶ 4} Several years after his direct appeal, on January 9, 2013, Jordan filed a petition for postconviction relief. The state opposed the petition for various reasons, including the petition's untimeliness. While the petition was still pending, on May 7, 2013, Jordan filed a motion to vacate and/or suspend court costs. The state filed a memorandum opposing the motion. On July 2, 2013, the trial court issued an entry denying Jordan's petition for postconviction relief and his motion to vacate and/or suspend court costs. Jordan did not appeal from that entry.

{¶ 5} Subsequently, on July 2, 2018, Jordan filed a motion captioned "motion to vacate or delay mandatory payment of court costs, fees," arguing he is financially unable to make payments toward the court costs. The state filed a memorandum contra, arguing Jordan's motion was barred by res judicata and substantively lacked merit. In an October 22, 2018 journal entry, the trial court denied Jordan's motion to vacate the payment of costs. Jordan timely appeals.

## **II. Assignment of Error**

{¶ 6} Jordan assigns the following sole error for our review:

R.C. §2949.14, allows for the collection for costs only against "non-indigent" defendants the courts deems indigent.

## **III. Analysis**

{¶ 7} In his sole assignment of error, Jordan argues the trial court erred in denying his motion to vacate the payment of court costs. More specifically, Jordan argues the trial court should have found the imposition of costs against him to be improper because he is indigent.

{¶ 8} As part of Jordan's judgment entry of conviction when he was convicted in 2006, the trial court imposed a fine totaling \$15,000 but waived the collection of the fine due to Jordan's indigent status. However, the trial court ordered Jordan to pay costs. Jordan appealed from the judgment entry of conviction but did not challenge the imposition of costs, and his conviction was affirmed on appeal. He now seeks, more than

12 years after his conviction, to have the trial court waive, modify, or suspend the payment of court costs.

{¶ 9} Pursuant to the version of R.C. 2947.23(C) effective March 23, 2013, a trial court "retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution, including any costs under section 2947.231 of the Revised Code, at the time of sentencing or at any time thereafter." However, the Supreme Court of Ohio has recently considered the issue of whether trial courts retain jurisdiction to waive, suspend, or modify the payment of court costs for offenders convicted prior to March 23, 2013. In *State v. Braden*, \_\_\_ Ohio St.3d \_\_\_, 2018-Ohio-5079, the Supreme Court determined that "prior to March 23, 2013, trial courts lacked jurisdiction to reconsider the payment of costs after sentencing and entry of a final order" because "a trial court cannot 'retain' jurisdiction that it has relinquished." *Braden* at ¶ 21. Accordingly, the Supreme Court held that "[f]or sentences entered prior to [March 23, 2013], an offender may seek a waiver of costs only at sentencing, the trial court lacks jurisdiction to reconsider its own final order, and any subsequent collateral attack on that order in either the trial or appellate court is barred by res judicata." *Braden* at ¶ 24.

{¶ 10} Here, the trial court ordered Jordan to pay costs when he was sentenced in 2006, and he failed to move for a waiver or challenge the imposition of costs on direct appeal. Thus, res judicata precludes the motion he filed to waive or modify the payment of costs. *Braden* at ¶ 25. Following the Supreme Court's decision in *Braden*, we conclude the trial court did not err in denying Jordan's motion to vacate or delay the payment of court costs. We overrule Jordan's sole assignment of error.

#### **IV. Disposition**

{¶ 11} Based on the foregoing reasons, res judicata operates to bar Jordan's motion to vacate or modify the payment of costs, and the trial court did not err in denying his motion. Having overruled Jordan's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and BRUNNER, JJ., concur.

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